

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

INNOVATION FIRST, INC. and
INNOVATION FIRST LABS, INC.,

Plaintiffs,

v.

URBAN TREND, LLC; ROBERT G.
KUSHNER; and MICHAEL STOLL,

Defendants.

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Civil Action No. 3:10-CV-00934

**APPENDIX TO DEFENDANTS'
MOTION TO DISMISS OR ALTERNATIVELY,
MOTION TO VACATE JUDGMENT AND SUPPORTING BRIEF**

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Respectfully submitted,

/s/ Mark W. Romney

Mark W. Romney

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Paul F. Gianni

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**ATTORNEY FOR DEFENDANTS URBAN
TREND, LLC, ROBERT G. KUSHNER AND
MICHAEL STOLL**

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be served through the Court's CM/ECF system to all counsel of record in this matter.

DATED this 14th day of January, 2011.

/s/ Mark W. Romney

Mark W. Romney

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DECLARATION OF ROBERT G. KUSHNER

I, Robert G. Kushner, declare under penalty of perjury that the following are within my personal knowledge and are true and correct.

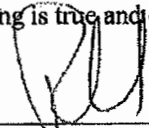
1. I am a U.S. citizen and a resident of Hong Kong. I am the Chief Executive Officer of Defendant Urban Trend, LLC ("Urban Trend").
2. I have never been to the State of Texas.
3. I do not maintain, nor am I required to maintain, a registered agent in Texas. I have no Texas mailing addresses or telephone numbers. I do not own any bank accounts, real estate, properties, or assets in Texas. I have no personal affiliation with Texas.
4. I have not brought, nor had brought against me, a lawsuit in Texas. I have not personally engaged in business in Texas, and have not personally contracted with any person in Texas. I have not by mail, telephone or other means of communication, regularly transacted business or contracted to supply goods or services in Texas or to any Texas resident. I have not advertised in Texas and maintain no offices, agents, or presence in Texas.
5. I was not personally involved with any of the conduct alleged in this case, including any conduct allegedly occurring in Texas, as my only involvement with Urban Trend and the products it offers or sells is as an agent of Urban Trend. I have not purposefully availed myself of the privilege of conducting activities within Texas, nor have I sought the benefits, profits, or advantages of doing business in Texas.

DECLARATION OF ROBERT G. KUSHNER

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6. I have not had any substantial connection with Texas arising from any action on my part that is or was purposefully directed towards Texas. I have not had systematic or continuous contacts with the state of Texas as part of the actions or injuries alleged in this suit, or outside of the actions or injuries alleged in this suit.
7. I also have not had any contacts with Texas in my corporate capacity as an agent and officer of Urban Trend. I have not purposefully or unintentionally directed any activities of Urban Trend to Texas or Texas residents.
8. Urban Trend is headquartered and incorporated in California. I personally live and work in Hong Kong.
9. Urban Trend is not incorporated in Texas and has no place of business in Texas. Urban Trend does not have any officers or employees in Texas, and does not maintain any offices or facilities in Texas. Urban Trend does not maintain any mailing address or phone numbers in Texas. Urban Trend does not own any bank accounts, real estate, properties, or assets in Texas.
10. Urban Trend is not required to and does not maintain a registered agent for service in Texas. Urban Trend has never brought, or had brought against it, a lawsuit in Texas. Urban Trend has not had meetings in Texas and does not have any records in Texas.
11. Urban Trend's only contact with Texas is a few limited sales of barware to Hastings Entertainment, Inc. ("Hastings"), a Texas company. The barware sold to Hastings is completely unrelated to the toys at issue in this lawsuit. I have not, nor to my knowledge has any Urban Trend officer or agent, traveled to Texas as part of these sales, and Urban Trend has not sold any other products within Texas.
12. With respect to the allegations in this suit, neither myself nor anyone on behalf of Urban Trend has designed, manufactured, advertised, promoted, distributed, sold, or in any way acted in Texas with respect to any of the micro robotic toys at issue in this suit. The only products Urban Trend offers that have any relationship to Texas is the barware sold to Hastings, and that barware is wholly unrelated to the allegations in this suit. Urban Trend, and myself on behalf of Urban Trend, have no other contacts with Texas.
13. Considering I am a permanent resident and live in Hong Kong, a significant burden would be placed on me to defend myself in a Texas court, and subjecting me to Texas courts would be unfair to my rights.

I declare under penalty of perjury that the foregoing is true and correct.

 1/14/11

Robert G. Kushner

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Civil Action No. 3:10-CV-00934

DECLARATION OF MICHAEL STOLL

I, Michael Stoll, declare under penalty of perjury that the following are within my personal knowledge and are true and correct.

1. I am a U.S. citizen and a resident of California. I am the President of Defendant Urban Trend, LLC ("Urban Trend"). The facts contained herein are based on my knowledge as an individual and my knowledge as President of Urban Trend.
2. I am not a Texas resident, and other than passing through Texas airports, I have never been to Texas except on one occasion for an unrelated matter.
3. I do not maintain, nor am I required to maintain, a registered agent in Texas. I have no Texas mailing addresses or telephone numbers. I do not own any bank accounts, real estate, properties, or assets in Texas. I have no personal affiliation with Texas.
4. I have not brought, nor had brought against me, a lawsuit in Texas. I have not personally engaged in business in Texas, and have not personally contracted with any person in Texas. I have not by mail, telephone or other means of communication, regularly transacted business or contracted to supply goods or services in Texas or to any Texas resident. I have not advertised in Texas and maintain no offices, agents, or presence in Texas.
5. I was not personally involved with any of the conduct alleged in this case, including any conduct allegedly occurring in Texas, as my only involvement with Urban Trend and the products it offers or sells is as an agent of Urban Trend. I have not purposefully availed myself of the privilege of conducting activities

within Texas, nor have I sought the benefits, profits, or advantages of doing business in Texas.

6. I have not had any substantial connection with Texas arising from any action on my part that is or was purposefully directed towards Texas. I have not had systematic or continuous contacts with the state of Texas as part of the actions or injuries alleged in this suit, or outside of the actions or injuries alleged in this suit.
7. I also have not had any relevant contacts with Texas in my corporate capacity as an agent and officer of Urban Trend. I have not purposefully or unintentionally directed any relevant activities of Urban Trend to Texas or Texas residents. I have never been to Texas for any matter on behalf of Urban Trend.
8. Urban Trend offers a wide variety of consumer products through its relationships with Asian manufacturing facilities. Urban Trend is headquartered and incorporated in California with offices in California. I personally operate on behalf of Urban Trend in California.
9. Urban Trend is not incorporated in Texas and has no place of business in Texas. Urban Trend does not have any officers or employees in Texas, and does not maintain any offices or facilities in Texas. Urban Trend does not maintain any mailing address or phone numbers in Texas. Urban Trend does not own any bank accounts, real estate, properties, or assets in Texas.
10. Urban Trend is not required to and does not maintain a registered agent for service in Texas. Urban Trend has never brought, or had brought against it, a lawsuit in Texas. Urban Trend has not had meetings in Texas and does not have any records in Texas.
11. Urban Trend's only contact with Texas is a few limited sales of barware to Hastings Entertainment, Inc. ("Hastings"), a Texas company. The barware sold to Hastings is completely unrelated to the toys at issue in this lawsuit. I estimate that these sales to Hastings account for only 3% of Urban Trend's sales in 2010, with no sales to Hastings prior to 2010. I have not, nor have any Urban Trend officer or agent, traveled to Texas as part of these sales, and Urban Trend has not sold any other products within Texas.
12. Urban Trend's website is informational in nature and does not allow for any interactivity with visitors of the website. For instance, visitors of the website cannot purchase Urban Trend's products directly through the website. Urban Trend does not solicit, transact, receive and/or enter into any type of contract to perform and/or be performed with Texas residents through this website. Urban Trend does maintain a separate website with a limited amount of products available. However, only a miniscule amount of sales have been made through that website as the website is primarily used as a reference point of prices for

news media outlets. Urban Trend does not advertise or offer for sale any micro robotic toys of the type at issue in this suit on any of its websites.

13. With respect to the allegations in this suit, neither Urban Trend, myself or anyone on behalf of Urban Trend has designed, manufactured, advertised, promoted, distributed, sold, or in any way acted in Texas or in any of the United States of America with respect to any of the micro robotic toys at issue in this suit. The only products Urban Trend offers that have any relationship to Texas is the barware sold to Hastings, and that barware is wholly unrelated to the allegations in this suit. Urban Trend, and myself on behalf of Urban Trend, have no other contacts with Texas.
14. Considering I live in California, a significant burden would be placed on me to defend myself in a Texas court, and subjecting me to Texas courts would be unfair to my rights. In addition, a significant burden would be placed on Urban Trend because all of its agents are located outside of Texas and any relevant evidence would likely be located outside of Texas.

I declare on this day, January 14, 2011, under penalty of perjury that the foregoing is true and correct.



Michael Stoll